COMMANDERS DIGEST
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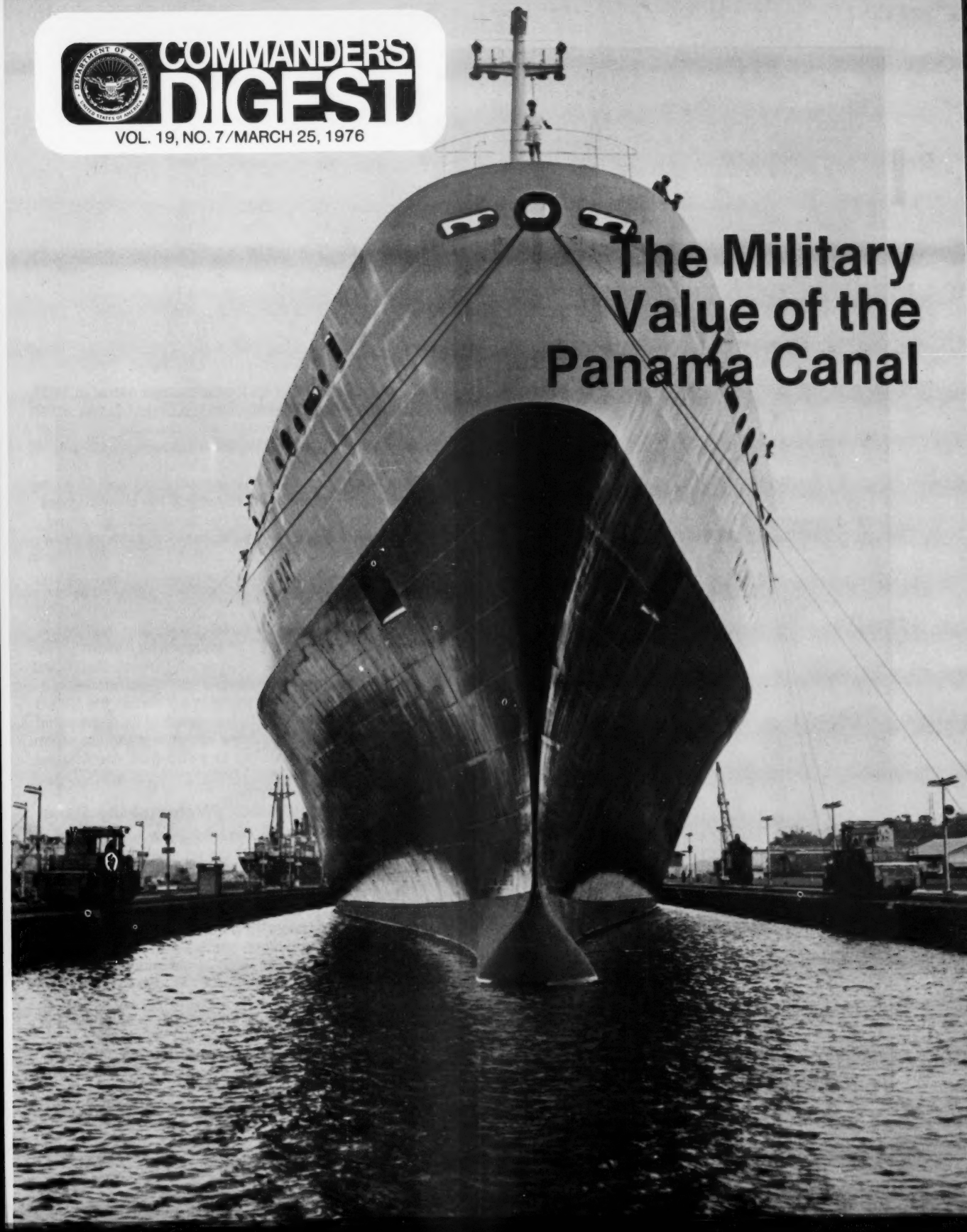
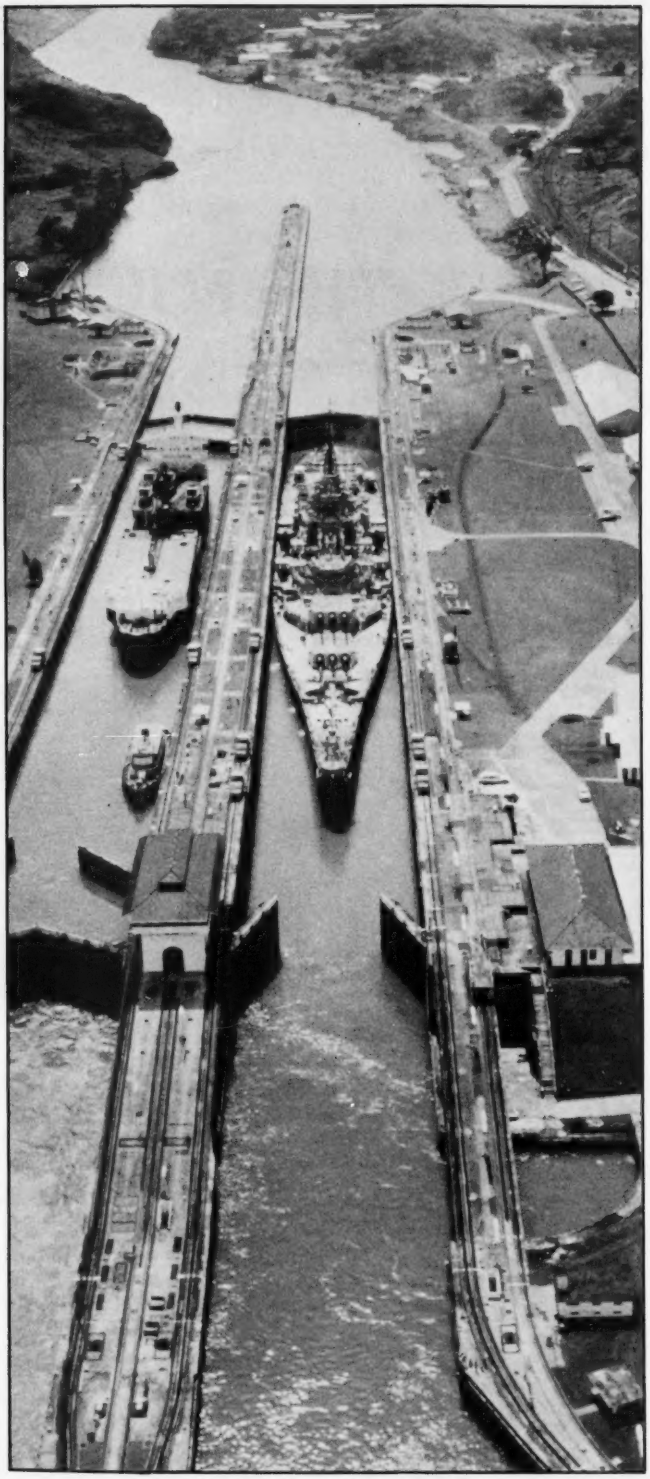
# The Military Value of the Panama Canal





Immediately after its formation as a nation in 1903, Panama signed a treaty with the United States which granted the United States—in perpetuity—the use of a 10-mile wide strip of Panamanian territory for the "construction, maintenance, operation, and protection" of an interoceanic canal as well as all the rights, power, and authority which the United States would possess "if it were the sovereign." The very favorable terms of the treaty were a major factor in the decision by the United States to build the canal in Panama rather than in Nicaragua, which was widely favored at the time.

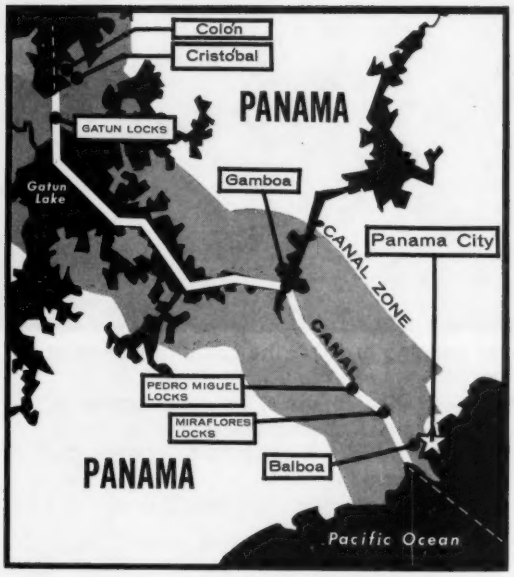
Despite some revisions in 1936 and 1955, the 1903 treaty has been and remains a source of friction and conflict between the United States and Panama. The seriousness of the situation led the United States and Panama in 1964 to agree to begin negotiations on a new treaty. In entering these negotiations, the United States acknowleged that a renewal of its relationship with Panama corresponded not only to the long-term U.S. national interests but to a changing international environment.

## Economic and Military Value of the Canal

Since its opening in 1914 the canal has been of considerable value to the United States, to Panama, and to the rest of the world. Of the total tonnage transiting the canal each year, about 44 percent originates from, and 22 percent is destined for, U.S. ports. Approximately 16 percent of total U.S. exports and imports by tonnage, and 8 percent by value, pass

**A battle ship passes through Pedro Miguel lock while transiting the canal.**

# U.S., Panama Talks on Canal Hold Promise




through the Panama Canal.

Currently more than 30 percent of Panama's foreign exchange earnings and nearly 13 percent of its GNP are directly or indirectly attributed to the presence of the canal. The share of Panama's GNP directly or indirectly attributable to canal operations, however, has shrunk over the years as other sectors of the economy have expanded.

In fact, the importance of the canal to the economies of the United States and other nations, as well as to that of Panama has decreased from earlier years as trading patterns have shifted and world commerce has become more sophisticated. Alternatives to the canal have begun to emerge, including the use of larger vessels which are unable to use the canal. Moreover, the shifting of markets and supply sources has also affected the economic importance of the canal, as has the partial substitution of land and air transport for ocean transport. As canal users in search of lower transportation costs take increasing advantage of these alternatives, the canal's value to user nations undoubtedly will continue to decline.

Historically, the canal has made an important military contribution to our country's security. It remains an important defense asset, the use of which enhances U.S. capability for timely reinforcement and resupply of U.S. forces. Its strategic military advantage lies in the economy and flexibility it provides to accelerate the shift of military forces and logistic support by sea between the Atlantic and Pacific Oceans to overseas areas.

## U.S. Treaty Objectives

For the foreseeable future the canal will continue to have economic and military value for the United States; therefore, we believe it must continue to function efficiently. The principal objective of the United States in the current treaty negotiations is to assure that the Panama Canal is operational, secure, efficient, and open on a non-discriminatory basis to world shipping.

In accord with this basic U.S. interest, the U.S. Government is seeking to establish a new and mutually acceptable treaty based on the concept of partnership. Under this new relationship, the United States would have the essential rights to operate and defend the canal for a reasonably extended period of time. In addition we are seeking a guarantee that the canal will remain neutral and open on a

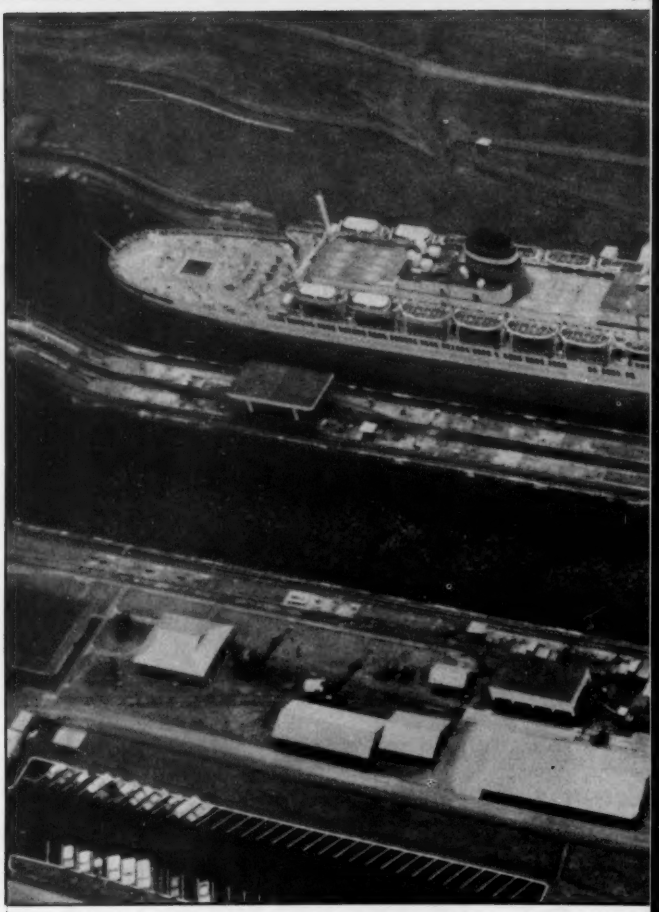
nondiscriminatory basis after termination of the treaty. In essence, a new treaty should reduce existing sources of friction and help foster the cooperative environment in Panama which is most conducive to protecting U.S. interests in the canal. Furthermore, this accord would signify a new era of cooperation between the United States and the rest of the hemisphere.

## Panama's Treaty Concerns

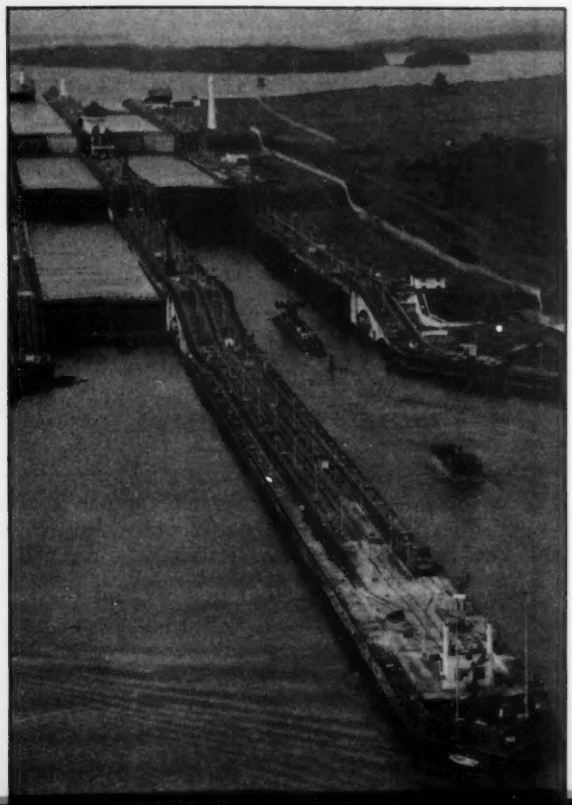
Panama has been dissatisfied with the existing treaty since its inception in 1903. Panamanians have blamed what they consider to be its highly unfavorable terms on the unusual circumstances under which the treaty was negotiated and ratified. They say that Panama's dependence upon the United States to protect its new-found independence from Colombia seriously limited its bargaining strength in the negotiations. Adding to their complaints, they note that the Panamanian negotiator was a French stockholder in the bankrupt French canal company—a company which benefited considerably when the United States purchased its assets.

Through the years Panama also has been dissatisfied with the level of direct economic benefits it receives from the canal. It has charged that in relation to the valuable rights and privileges granted to the United States, its share of canal revenue is inadequate.

Panamanian discontent, however, is primarily political. It is focused on the treaty's terms which granted to the United States "in perpetuity" sweeping jurisdictional powers as "if it were the sovereign," over 550 square miles of Panamanian territory. The problem, Panama asserts, is that the United States operates a full-fledged foreign government on Panamanian territory. To back up its contention Panama states that the United States exercises almost total jurisdictional rights, maintaining a police force, courts, and jails to enforce U.S. laws which are applicable equally to Panamanian as well as U.S. citizens in the Canal Zone. The United States controls all legal activity from murder trials to marriage and divorce actions. In addition Panama charges that the U.S. Government operates virtually all commercial enterprises within the Canal Zone, thereby unfairly denying Panamanians the ability to compete for business opportunities. Moreover, they state that the United States controls all the deep-water port facilities which serve Panama and holds large land and water areas which could productively benefit Panama's economy. Panama also claims that the Canal Zone, which cuts across its heartland, has seriously curbed



**Since its opening in 1914, the canal has been of considerable value to the United States, to Panama, and to the rest of the world. Clockwise, these photographs show an aerial view of the canal's Gatun Locks, a ship at Port Amador, Canal Zone, and one chamber of Miraflores Locks undergoing overhaul while a ship transits South.**



the growth of its urban areas. Finally, Panama notes that we pay but $2.3 million annually for these immensely valuable rights—rights which, under the existing treaty, the United States can continue to have forever.

Over the years the United States has attempted to respond to some of Panama's most pressing concerns. The 1903 treaty was revised in 1936 and again in 1955. As a result Panama now receives a greater share of the economic benefits related to the canal. Also, certain outdated powers have been eliminated, such as our right to interfere in Panama's internal affairs.

Despite these modifications, however, the most objectionable feature in the present treaty, from Panama's viewpoint—the U.S. exercise of rights over the Canal Zone as if it were sovereign forever—has remained unchanged.

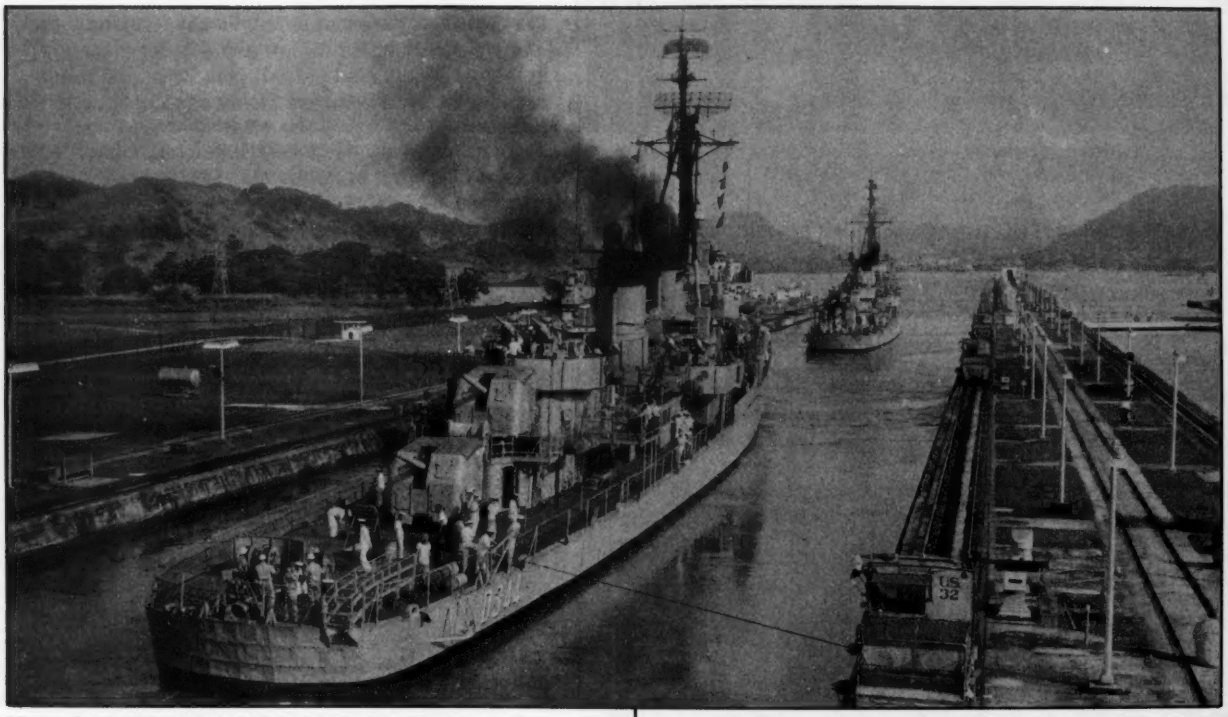
In recent years the other Latin American nations have strongly supported Panama's quest for a more modern treaty. They have made the negotiation of a new treaty a major hemispheric issue as well as a general test of U.S. intentions regarding all of Latin America.

## The Question of Sovereignty and Perpetuity

A major issue raised by many U.S. citizens who are opposed to the present negotiations with Panama concerns the question of U.S. sovereignty over the Canal Zone. It is necessary to distinguish between treaty rights, which allow the use and control by one nation over a piece of foreign territory, and actual sovereignty—supreme and independent power or authority—over that territory. From a legal standpoint the United States does not have sovereignty over the Canal Zone. Rather, by treaty right, we exercise virtually complete jurisdiction over that part of the Panamanian territory which comprises the Canal Zone.

Judging the need for a new treaty, however, depends less on the nature of our legal position in the Canal Zone than on considering the best way to assure the continued protection of our fundamental interest in the canal. More specifically, we must weigh the cost of perpetuating the exercise of total U.S. jurisdiction over the Canal Zone. Will this allow the United States to continue to provide the degree of protection for the canal which we seek?

We have to keep constantly in mind that our fundamental interest in the canal is to keep it open,



**More than 30 percent of Panama's foreign exchange earnings and nearly 13 percent of its gross national product are directly or indirectly attributed to the presence of the canal.**

safe, efficient, and neutral. How do we best do that? The exercise of general jurisdiction over the Canal Zone has not been an end in itself, but merely a tool to protect that fundamental interest. At the present, our ability to protect our interests through the exercise of this extensive grant of jurisdictional authority is in serious doubt. This is why we believe that a new treaty relationship—based on the concept of partnership and similar to other agreements with our allies throughout the world—offers a tool that will better protect our basic interests.

Today, reliance on the exercise—in perpetuity—of sovereign-like rights has become a source of unnecessary tension. Clearly, no international relationship negotiated more than 70 years ago can be expected to last forever without substantial adjustment. To adhere to the concept of perpetuity in today's rapidly evolving world is not only unrealistic but dangerous. Indeed, a relationship which does not provide for the possibility of periodic mutual revision and adjustment is likely to spawn the kind of hostile environment which will jeopardize the very interest that perpetuity was designed to protect. In sum, a new treaty based on partnership would give the United States the rights we need, restore the crucial ingredient of Panamanian consent, and strengthen our mutual interest in a well-run and secure canal.

## Chronology of Negotiations

Today, the canal is the major political issue in Panama and in Panamanian-U.S. bilateral relations. The intensification of Panama's desire for more equitable treaty terms has produced severe stress in our relations; this was most notable in January 1964 when riots led to the deaths of 20 Panamanians and 4 Americans.

During 1964 the status of the canal was debated in the United Nations, the Organization of American States, and other international bodies. Later that year President Johnson, after consulting with Presidents Truman and Eisenhower, and with bipartisan support, made a public commitment to negotiate a wholly new, fixed-term canal treaty. President Nixon and President Ford have subsequently reaffirmed that commitment.

In 1967 three draft agreements were prepared but neither government moved to ratify them. Later the Government of Panama, under General Omar Torrijos, formally rejected these draft treaties. The United States and Panama renewed negotiations in 1971 but progress was limited.

In March 1973 the U.N. Security Council met in Panama City and debated a resolution which supported Panama's position on the canal issue. Although the U.S. Permanent Representative to the U.N. vetoed the particular terms of the resolution on the grounds that it recognized Panama's concerns but not those of the United States, he did reaffirm the U.S. commitment to peaceful adjustment of its differences with Panama. In September 1973 Ambassador at Large Ellsworth Bunker was charged with the task of resuming negotiations with Panama. During succeeding months, Ambassador Bunker met with Panamanian officials to work out a common approach to future treaty negotiations.

On February 7, 1974, Secretary of State Kissinger and Panamanian Foreign Minister Juan Antonio Tack met in Panama City and signed a Joint Statement of Principles which has served as the framework for the present negotiations.

The representatives of the two governments subsequently met several times in Panama and Washington to define the issues involved in the new treaty arrangement. In June 1974 Ambassador Bunker and Foreign Minister Tack began substantive talks aimed at resolving these issues.

## Issues in the Negotiations

The United States and Panama have agreed in principle that the treaty of 1903 should be replaced by a new, fixed-term treaty which will accommodate Panama's concerns about sovereignty and at the same time adequately protect the interests of the United States in a safe, efficient, and neutral canal open to the ships of all nations. In the context of the Joint Statement of Principles the two negotiating parties are working to resolve the following issues:

1. **Duration.** How long will the new treaty remain in force?
2. **Operation and Defense.** What rights and arrangements are necessary for the United States to continue to operate, maintain, and defend the canal effectively?
3. **Lands and Waters.** What geographic areas will the United States require to accomplish its purpose?
4. **Jurisdiction.** How soon and under what arrangements will U.S. jurisdiction terminate? What functions will continue to be performed by the United States after its jurisdiction has terminated?
5. **Expansion of Capacity.** How will the new treaty provide for possible enlargement of the canal?
6. **Participation.** How will Panama participate in the administration and defense of the canal?
7. **Compensation.** What will be the economic form and level of benefits to Panama under the new treaty?

## Current Status

Since June 1974 both governments have been proceeding deliberately toward resolution of the major issues. Tentative agreement in principle has been reached on the issues of Panamanian participation in the operation and defense of the canal; and in general terms, we agree on the rights the United States will need to operate and defend the canal. Nevertheless, the difficult issues of treaty duration, expansion rights, economic benefits to Panama, and definition of lands and waters required for canal operation and defense remain unresolved. For these reasons it is not possible to predict when a draft treaty will be completed.

The executive branch has been in continuous consultation with Congress regarding a new canal treaty. Any draft treaty agreed upon by the negotiators and approved by the executive branch will be submitted to the Senate for advice and consent as required by the Constitution, and will be subject to full public debate. Panama, according to its constitution, must submit any new treaty to a plebiscite to insure that it is acceptable to the Panamanian people. Either party may initially undertake the ratification process.

In summary, the mutual goal of Panama and the United States is to negotiate a treaty which will satisfy the basic concerns of both nations, gain the appropriate constitutional acceptance in both nations, and evoke the full support of both the American and Panamanian people.

# STATEMENT OF PRINCIPLES

*Joint Statement by the Honorable Henry A. Kissinger, Secretary of State of the United States of America, and His Excellency Juan Antonio Tack, Minister of Foreign Affairs of the Republic of Panama, on February 7, 1974 at Panama.*

The United States of America and the Republic of Panama have been engaged in negotiations to conclude an entirely new treaty respecting the Panama Canal, negotiations which were made possible by the Joint Declaration between the two countries of April 3, 1964, agreed to under the auspices of the Permanent Council of the Organization of American States acting provisionally as the Organ of Consultation. The new treaty would abrogate the treaty existing since 1903 and its subsequent amendments, establishing the necessary conditions for a modern relationship between the two countries based on the most profound mutual respect. Since the end of last November, the authorized representatives of the two governments have been holding important conversations which have permitted agreement to be reached on a set of fundamental principles which will serve to guide the negotiations in the effort to conclude a just and equitable treaty eliminating, once and for all, the causes of conflict between the two countries.

The principles to which we have agreed, on behalf of our respective governments, are as follows:

1. The treaty of 1903 and its amendments will be abrogated by the conclusion of an entirely new interoceanic canal treaty.

2. The concept of perpetuity will be eliminated. The new treaty concerning the lock canal shall have a fixed termination date.

3. Termination of United States jurisdiction over Panamanian territory shall take place promptly in accordance with terms specified in the treaty.

4. The Panamanian territory in which the canal is situated shall be returned to the jurisdiction of the Republic of Panama. The Republic of Panama, in its capacity as territorial sovereign, shall grant to the United States of America, for the duration of the new interoceanic canal treaty and in accordance with what that treaty states, the right to use the lands, waters and airspace which may be necessary for the operation, maintenance, protection and defense of the canal and the transit of ships.

5. The Republic of Panama shall have a just and equitable share of the benefits derived from the operation of the canal in its territory. It is recognized that the geographic position of its territory constitutes the principal resource of the Republic of Panama.

6. The Republic of Panama shall participate in the administration of the canal, in accordance with a procedure to be agreed upon in the treaty. The treaty shall also provide that Panama will assume total responsibility for the operation of the canal upon the termination of the treaty. The Republic of Panama shall grant to the United States of America the rights necessary to regulate the transit of ships through the canal and operate, maintain, protect and defend the canal, and to undertake any other specific activity related to those ends, as may be agreed upon in the treaty.

7. The Republic of Panama shall participate with the United States of America in the protection and defense of the canal in accordance with what is agreed upon in the new treaty.

8. The United States of America and the Republic of Panama, recognizing the important services rendered by the interoceanic Panama Canal to international maritime traffic, and bearing in mind the possibility that the present canal could become inadequate for said traffic, shall agree bilaterally on provisions for new projects which will enlarge canal capacity. Such provisions will be incorporated in the new treaty in accord with the concepts established in principle 2.

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